

S.B.CIVIL WRIT PETITION NO.6587/2006

M/s Swastik Pesticides Ltd. Co.
V.
State of Rajasthan & Ors.

Date of Order :: 14th December, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. O.P.Boob, Deputy Government Advocate.

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The petitioner is a company incorporated under Companies Act, 1956 and is involved in the business of marketing the insecticides. The Joint Director, Agriculture (Plant Protection), under an order dated 15.7.2005 suspended the licence of the petitioner pertaining to manufacturing/marketing of insecticides for a term of six months. An opportunity was also given to the petitioner to explain as to why his licence for marketing insecticides be not cancelled. The Joint Director, Agriculture (Plant Protection), under an order dated 13.1.2006 while exercising powers under Section 14 of the Insecticides Act, 1968 (hereinafter referred to as "the Act of 1968"), cancelled the licence of the petitioner for marketing insecticides. Being aggrieved by the order dated 13.1.2006 the petitioner preferred an appeal in accordance with the provisions of Section 15 of the Act of 1968 read with Section 3 of the Rajasthan

Insecticides (Appeal) Rules, 1980 (hereinafter referred to as "the Rules of 1980"). The appellate authority during pendency of appeal extended the currency of licence that was cancelled under order dated 13.1.2006 time to time and ultimately by an order dated 19.10.2006 rejected the appeal by maintaining the order dated 13.1.2006 passed by the licensing authority, that is the Joint Director, Agriculture, (Plant Protection), Jaipur.

The petitioner at the time of disposal of appeal under order dated 19.10.2006 failed to appear before the appellate authority and, therefore, preferred an application for recalling the order dated 19.10.2006 on 1.11.2006. The appellate authority by an order dated 13.11.2006 rejected the application for recalling the order dated 19.10.2006, hence this petition for writ is preferred.

According to counsel for the petitioner the order dated 13.1.2006 itself is in violation of principles of natural justice being passed without affording an adequate opportunity to the petitioner to defend itself, the order dated 13.1.2006 does not disclose any reason and further that the licensing authority passed the order impugned without application of mind. The petitioner while assailing validity of the order passed by the appellate authority alleged that the appellate authority also

exercised the powers vested with it in mechanical manner and without application of mind.

A reply to the writ petition has been filed on behalf of the respondents stating therein that sufficient opportunity was given to the petitioner to explain its version but nobody choose to avail it.

Heard counsel for the parties.

Under the Act of 1968 Section 14 empowers the licensing authority for revocation, suspension and amendment of licenses, however, no licence can be revoked or suspended without affording the licence holder an opportunity of showing cause. A remedy of an appeal is prescribed under Section 15 of the Act of 1968 to a licence holder if he is having any grievance with regard to an order passed under Section 14 of the Act of 1968. According to the Rules of 1980 the appellate authority under the Act of 1968 is required to follow the same procedure that a court follows in deciding appeals from decrees or orders of an original court under the Code of Civil Procedure, 1908. It is well settled that an appellate court examines the record of evidence presented before the original authority and the law that original authority applied and decides. Normally the appellate authority does not record evidence but only consider the evidence produced before the original authority. Under the Act

of 1968 a remedy of appeal is prescribed against an order passed under Section 14 and such an appeal in light of the provisions of Rule 4 of the Rules of 1980 is required to be considered as a regular appeal under Section 96 of Civil Procedure Code, 1908. The statutory obligation for adjudication of an appeal giving challenge to an order revoking or suspending licence clearly shows that the legislature intended that revocation or suspension of a licence granted under the Act of 1968 should be with all caution and by affording adequate opportunity to a licence holder before taking any action under Section 14 of the Act of 1968. The right given under Section 14 of the Act of 1968 for defence to a licence holder is not a summary one but a detailed inquiry is required to be conducted before taking any action. The intention of the legislature by providing a remedy of appeal that is to be adjudicated as an appeal under Section 96 of Civil Procedure Code is that the inquiry under Section 14 should also be made by recording evidence and by considering entire material on record.

In the instant matter it is apparent from perusal of the order dated 13.1.2006 that the licensing authority revoked licence of the petitioner without holding adequate inquiry. It is true that an opportunity to show cause was given to the petitioner but as held above the requirement was to conduct a

detailed inquiry by giving a notice to show cause at inception. Such inquiry cannot be dispensed with on the count that no explanation was given by licence holder. The licensing authority must give a finding for the charge that resulted into revocation or suspension of the licence. No such finding is available in the instant matter, therefore, the order under Section 14 itself is bad in eye of law. The order of the appellate authority is also non-est as the original order itself is bad in eye of law.

Hence, this petition for writ is allowed. The order dated 13.1.2006 passed by the licensing authority that is the Joint Director, Agriculture (Plant Protection) and the order dated 19.10.2006 passed by the appellate authority are quashed. The licensing authority may pass a fresh order after holding an inquiry in accordance with Section 14 of the Act of 1968.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.